

AMENDED IN ASSEMBLY APRIL 11, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 884

Introduced by Assembly Member Dymally

February 22, 2007

An act to amend Sections 50199.5, 50199.8, ~~50199.10~~, and 50199.14; and ~~50199.20~~, of the Health and Safety Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

AB 884, as amended, Dymally. Low-income housing tax credit allocation program.

Existing law establishes the California Tax Credit Allocation Committee in state government to provide low-income housing tax credits to stimulate the production and rehabilitation of shelter for lower income individuals and families. Existing law requires the committee to allocate the housing tax credit on a regular basis consisting of 2 or more periods during which applications may be filed and considered. The committee is required to use certain criteria in allocating housing tax credits.

This bill would include 2 additional appointed members in the committee.

The bill would require the committee to consider whether a project is an infill project or eliminates neighborhood blight, among the criteria used in allocating housing tax credits.

~~Existing law relating to the program established to provide low-income tax credits to stimulate the production and rehabilitation of shelter for lower income individuals and families authorizes, among other things, the California Tax Credit Allocation Committee to set aside up~~

to 2% of the available tax credit for small developments as determined by the committee.

~~This bill would increase that amount from 2% to 5% and apply that new percentage to developments of less than 35 units. This bill would also include specified additional appointments to the committee, require the allocation of by a lottery system and on the basis of other criterion, authorize a joint venture with a partner in the case the applicant for the credit is a developer, and authorize allocations to urban infill and neighborhood blight projects, as provided.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 50199.5 of the Health and Safety Code
2 is amended to read:

3 50199.5. The Legislature hereby finds and declares all of the
4 following:

5 (a) Section 42 of the Internal Revenue Code has been modified
6 by the federal Revenue Reconciliation Act of 1989 to require that
7 the housing credit agency establish a qualified allocation plan
8 which sets forth selection criteria to be used to determine housing
9 priorities that are appropriate to local conditions, and which gives
10 preference in allocating housing credit dollar amounts to projects
11 serving the lowest income tenants and projects obligated to serve
12 low-income tenants for the longest periods.

13 (b) The qualified allocation plan shall encompass and
14 incorporate the criteria and requirements set forth in Section
15 50199.14.

16 (c) Certain provisions of the California Tax Credit should be
17 modified to conform to the changes to the federal low-income
18 housing tax credit.

19 (d) The Tax Credit Allocation Committee should, to the extent
20 possible, allocate the California low-income housing tax credit
21 using the same criteria and requirements used in allocating the
22 federal tax credit.

23 (e) The public interest is best served by the dissemination of
24 information regarding the low-income housing tax credit program
25 to all areas of the state, with special efforts in rural and urban areas
26 and for projects sponsored by community-based nonprofit

1 organizations, to ensure greater knowledge and participation in
2 the program.

3 *(f) The public interest is also best served by the allocation of*
4 *tax credits under a system that allows fair competition for new tax*
5 *credit sponsors and developers.*

6 SEC. 2. Section 50199.8 of the Health and Safety Code is
7 amended to read:

8 50199.8. The committee is composed of the Governor, or in
9 the Governor's absence, the Director of Finance, the Controller,
10 the Treasurer, one representative appointed by the Senate
11 Committee on Rules, and one representative appointed by the
12 Speaker of the Assembly. The Director of Housing and Community
13 Development, the Executive Director of the California Housing
14 Finance Agency, and two representatives of local government, one
15 representative of the counties appointed by the Senate Committee
16 on Rules, and one representative of the cities appointed by the
17 Speaker of the Assembly shall serve as ex officio, nonvoting
18 members. The Treasurer shall be the chairperson of the committee.
19 The members of the committee shall serve without compensation.
20 A majority of voting members shall be empowered to act for the
21 committee. The committee may employ an executive director to
22 carry out its duties under this chapter. The committee may delegate
23 to the executive director the authority to enter contracts on behalf
24 of the committee.

25 ~~SEC. 3. Section 50199.10 of the Health and Safety Code is~~
26 ~~amended to read:~~

27 ~~50199.10. (a) For purposes of allocating low-income housing~~
28 ~~credits, the committee is hereby designated as this state's only~~
29 ~~housing credit agency for purposes of Section 42(h) of the federal~~
30 ~~Internal Revenue Code (26 U.S.C. Sec. 42(h)). The committee~~
31 ~~shall annually determine and shall allocate the state ceiling in~~
32 ~~accordance with this chapter and in conformity with federal law.~~
33 ~~The committee shall determine the housing credit ceiling as soon~~
34 ~~as possible following the effective date of this chapter and~~
35 ~~thereafter following the commencement of each calendar year.~~
36 ~~The committee shall undertake any and all responsibilities of~~
37 ~~housing credit agencies under Section 42 of Title 26 of the United~~
38 ~~States Code, including entering into regulatory agreements relating~~
39 ~~to projects that are granted awards.~~

1 ~~(b) The committee shall develop and provide application forms~~
2 ~~for use by housing credit applicants. The committee shall adopt~~
3 ~~uniform procedures for submission and review of applications of~~
4 ~~housing credit applicants, including fees to defray the committee's~~
5 ~~costs in administering this chapter. In the committee's discretion,~~
6 ~~the fees shall be charged to a housing credit applicant as a condition~~
7 ~~of submitting an application or as a condition of receiving an~~
8 ~~allocation or reservation of the state's current or anticipated~~
9 ~~housing credit ceiling, or both.~~

10 ~~(c) In addition to allocating the current housing credit ceiling,~~
11 ~~the committee may reserve a portion of the state's anticipated~~
12 ~~housing credit ceiling for a subsequent year for a housing credit~~
13 ~~applicant.~~

14 ~~(d) As a condition to making an allocation of the housing credit~~
15 ~~ceiling or a reservation of the anticipated housing credit ceiling~~
16 ~~for a subsequent year, the committee may require the housing~~
17 ~~credit applicant receiving the allocation or reservation to deposit~~
18 ~~with the committee an amount of money as a good-faith~~
19 ~~undertaking. The committee shall adopt policies for determining~~
20 ~~when deposits will be required, prescribing procedures for return~~
21 ~~of deposits, and specifying the circumstances under which the~~
22 ~~deposits will be forfeited in whole or in part for failure to timely~~
23 ~~utilize the allocation or reservation provided to the housing credit~~
24 ~~applicant.~~

25 ~~(e) (1) The committee may make any allocation or reservation~~
26 ~~of the state's housing credit ceiling to a housing credit applicant~~
27 ~~subject to terms and conditions in furtherance of the purposes of~~
28 ~~this part. The committee may condition an allocation or reservation~~
29 ~~on the execution of a contract between the housing credit applicant~~
30 ~~and the committee requiring the housing credit applicant to comply~~
31 ~~with all the terms of Section 42 of the federal Internal Revenue~~
32 ~~Code, any applicable state laws, and any additional requirements~~
33 ~~the committee deems necessary or appropriate to serve the purposes~~
34 ~~of this chapter, and providing for legal action to obtain specific~~
35 ~~performance or monetary damages for breach of contract.~~

36 ~~(2) No allocations or reservations shall be made pursuant to this~~
37 ~~subdivision with respect to projects that do not meet the~~
38 ~~requirements of the qualified allocation plan, and no allocations~~
39 ~~or reservations shall be made in amounts that do not meet the~~
40 ~~requirements of paragraph (2) of subsection (m) of Section 42 of~~

1 ~~Title 26 of the United States Code. Notwithstanding any provision~~
2 ~~of this chapter to the contrary, all credits shall be allocated pursuant~~
3 ~~to the qualified allocation plan as follows:~~

- 4 ~~(A) 50 percent by a lottery system.~~
- 5 ~~(B) 50 percent in accordance with criterion established by the~~
6 ~~committee.~~

7 ~~SEC. 4.~~

8 *SEC. 3.* Section 50199.14 of the Health and Safety Code is
9 amended to read:

10 50199.14. (a) The committee shall allocate the housing credit
11 on a regular basis consisting of two or more periods in each
12 calendar year during which applications may be filed and
13 considered. The committee shall establish application filing
14 deadlines, the maximum percentage of federal and state low-income
15 housing tax credit ceiling that may be allocated by the committee
16 in that period, and the approximate date on which allocations shall
17 be made. If the enactment of federal or state law, or the adoption
18 of rules or regulations, or other similar events prevent the use of
19 two allocation periods, the committee may reduce the number of
20 periods and adjust the filing deadlines, maximum percentage of
21 credit allocated, and the allocation dates.

22 (b) The committee shall adopt a qualified allocation plan, as
23 provided in paragraph (1) of subsection (m) of Section 42 of Title
24 26 of the United States Code. In adopting this plan, the committee
25 shall comply with the provisions of subparagraphs (B) and (C) of
26 paragraph (1) of subsection (m) of Section 42 of Title 26 of the
27 United States Code.

28 (c) In order to promote affordable low-income housing within
29 and throughout the state, the committee shall allocate housing
30 credits in accordance with the qualified allocation plan and
31 regulations, which shall include the following provisions:

32 (1) All housing credit applicants shall demonstrate at the time
33 the application is filed with the committee, that the project meets
34 the following threshold requirements:

35 (A) The housing credit applicant shall demonstrate there is a
36 need and demand for low-income housing in the community or
37 region for which it is proposed.

38 (B) The project's proposed financing, including tax credit
39 proceeds, shall be sufficient to complete the project and that the

1 proposed operating income shall be adequate to operate the project
 2 for the extended use period.

3 (C) The project shall have enforceable financing commitments,
 4 either construction or permanent financing, for at least 50 percent
 5 of the total estimated financing of the project.

6 (D) The housing credit applicant shall have and maintain control
 7 of the site for the project.

8 (E) The housing sponsor shall demonstrate that the project
 9 complies with all applicable local land use and zoning ordinances.

10 (F) The housing credit applicant shall demonstrate that the
 11 project development team has the experience and the financial
 12 capacity to ensure project completion and operation for the
 13 ~~extended use period. If the housing credit applicant is a new~~
 14 ~~developer, the housing credit applicant may joint venture with a~~
 15 ~~partner to demonstrate that the project development team has the~~
 16 ~~experience and the financial capacity to ensure project completion~~
 17 ~~and operation for the extended use period.~~ *extended use period.*

18 (G) The housing credit applicant shall demonstrate the amount
 19 of tax credit that is necessary for the financial feasibility of the
 20 project and its viability as a qualified low-income housing project
 21 throughout the extended use period, taking into account operating
 22 expenses, supportable debt service, reserves, funds set aside for
 23 rental subsidies, and required equity, and a development fee that
 24 does not exceed a specified percentage of the eligible basis of the
 25 project prior to inclusion of the development fee in the basis, as
 26 determined by the committee.

27 (2) The committee shall give a preference to those projects
 28 satisfying all of the threshold requirements of paragraph (1) if:

29 (A) The project serves the lowest income tenants at rents
 30 affordable to those tenants; and

31 (B) The project is obligated to serve qualified tenants for the
 32 longest period.

33 (3) In addition to the provisions of paragraphs (1) and (2) of
 34 subdivision (c), the committee shall use the following criteria in
 35 allocating housing credits:

36 (A) Projects serving large families in which a substantial
 37 number, as defined by the committee, of all residential units are
 38 comprised of low-income units with three and more bedrooms.

39 (B) Projects providing single room occupancy units serving
 40 very low income tenants.

1 (C) Existing projects that are “at risk of conversion,” as defined
2 by paragraph (4) of subdivision (c) of Section 17058 of the
3 Revenue and Taxation Code.

4 (D) Projects for which a public agency provides direct or indirect
5 long-term financial support for at least 15 percent of the total
6 project development costs or projects for which the owner’s equity
7 constitutes at least 30 percent of the total project development
8 costs.

9 (E) Projects that provide tenant amenities or services not
10 generally available to residents of low-income housing projects.

11 (F) Projects that are ~~urban~~ infill and that eliminate neighborhood
12 blight.

13 (d) For purposes of allocating credits pursuant to this section,
14 the committee shall not give preference to any project by virtue
15 of the date of submission of its application, except to break a tie
16 when two or more of the projects have the same rating.

17 (e) The committee shall allocate credits to a project under this
18 section prior to allocating credit to that project under Sections
19 12206, 17058, and 23610.5 of the Revenue and Taxation Code.

20 (f) The committee shall allocate credits to a project only if the
21 housing sponsor enters into a regulatory agreement that provides
22 for an “extended use period” as defined in subparagraph (D) of
23 paragraph (6) of subsection (h) of Section 42 of the Internal
24 Revenue Code, which shall terminate on the date specified in the
25 regulatory agreement or the date the project is acquired in
26 foreclosure, including any instrument in lieu of foreclosure,
27 whichever occurs first, and subclause (II) of subparagraph (E) of
28 clause (i) of paragraph (6) of subsection (h) of Section 42 shall
29 not apply.

30 ~~SEC. 5. Section 50199.20 of the Health and Safety Code is~~
31 ~~amended to read:~~

32 ~~50199.20. (a) Not less than 20 percent of the federal ceiling~~
33 ~~on low-income housing tax credits shall be set aside for allocation~~
34 ~~to rural areas as defined in Section 50199.21. Any amount of credit~~
35 ~~set aside for rural areas remaining after the ranking of credits in~~
36 ~~the final cycle of any calendar year shall be available for allocation~~
37 ~~to any eligible project.~~

38 ~~(b) Not less than 5 percent of the low-income housing tax credit~~
39 ~~available under this chapter and Sections 12206, 17058, and~~
40 ~~23610.5 of the Revenue and Taxation Code may be set aside for~~

1 ~~small developments of less than 35 units as determined by the~~
2 ~~committee. Any amount of credit set aside for small developments~~
3 ~~remaining after the ranking of projects in the final cycle of any~~
4 ~~calendar year shall be available for allocation to any eligible~~
5 ~~project.~~
6 ~~(e) Not less than 15 percent of the federal ceiling on low-income~~
7 ~~housing tax credits shall be set aside for allocation to urban infill~~
8 ~~development areas that eliminate blight. Any amount of the credits~~
9 ~~set aside for urban infill development areas remaining after the~~
10 ~~ranking of credits in the final cycle of any calendar year shall be~~
11 ~~available for allocation to any eligible project.~~